

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:04CR53
)	
v.)	
)	
COREY SPIGNER,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on defendant's motion asking the Court to reconsider its order of January 4, 2007 (Filing No. 59). The Court has reviewed the motion for reconsideration, as well as the supporting documentation submitted by defendant, and finds that the motion should be denied.

In addition, defendant seeks a certificate of appealability. However, a review of the Court's order of January 4, 2007, demonstrates that the defendant has failed to make a substantial showing of the denial of a constitutional right and his motion for certificate of appealability will be denied.

The Court notes that defendant relies on *United States v. Gunter* 462 F.3d 237 (3rd Cir. 2006), which in part takes the position that the sentencing court has the discretion to consider the crack/powder cocaine differential incorporated in the sentencing guidelines as a basis for sentencing the defendant in a range that recognizes the differential to be unjustified. This

position has been repudiated by the United States Court of Appeals for the Eighth Circuit on the basis that this distinction is a statutory distinction imposed by Congress, and Congress must modify that disparity if it finds it is inappropriate. In addition, the defendant relies in large part upon dissenting opinions in various Supreme Court opinions to support his position that the disparity is racially discriminatory. Accordingly, the Court will deny the motion for reconsideration and for certificate of appealability.

IT IS ORDERED that defendant's motion for reconsideration and for certificate of appealability is denied.

DATED this 13th day of April, 2007.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court